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No. 86-276

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

WILLIAM CONWAY, *et al.*,
Cross-Petitioners,

v.

AMERICAN TRUCKING ASSOCIATIONS, *et al.*,
Cross-Respondents.

On Conditional Cross-Petition for a Writ of Certiorari to the Supreme Court of Vermont

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REPLY BRIEF FOR CONDITIONAL CROSS-PETITIONERS

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We submit this reply brief to address the suggested dispositions that appear at p. 4 of the brief for cross-respondents (hereinafter "ATA"). ATA there states:

> [W]e believe the Court should grant review both in *Scheiner* [*American Trucking Associations, Inc.* v. *Scheiner*, No. 86-357] and in No. 86-69 [ATA's petition in the instant case] . . . and should hold the cross-petition in No. 86-276. In the alternative, the Court may prefer to hold both No. 86-69 and No. 86-276 pending a decision in *Scheiner*.

Neither of these suggested courses makes sense, as we briefly explain.

In No. 86-69, ATA's petition seeks review of the Vermont Supreme Court's ruling that the state's sovereign

immunity precludes the state courts from entering a monetary award payable from the state treasury. That issue is *not* presented in *Scheiner*, nor in any other case now pending in this Court. Accordingly, it would make no sense to "hold" the petition in No. 86-69.

The state's cross-petition herein, No. 86-276, *does* present the same issue as *Scheiner* (whether substantially similar state tax statutes offend the Commerce Clause), but the cross-petition is *conditional*. Thus, unless the Court were to decide to grant certiorari in No. 86-69, the disposition of the cross-petition would be automatic.

For these reasons, we submit that the only sensible course is to first address whether certiorari should be granted in No. 86-69. If this Court concludes that it lacks jurisdiction over the issue presented in No. 86-69, or that that issue does not warrant the Court's plenary consideration, then the petition in No. 86-69 and the conditional cross-petition in No. 86-276 both should be denied.

If the Court were to conclude that certiorari *should* be granted in No. 86-69, still it would make no sense to "hold" the cross-petition in No. 86-276, as ATA alternatively suggests. That course would have the Court deciding the remedial issue while postponing consideration of the question whether there is any violation to remedy. Thus, if certiorari is granted in No. 86-69, it should be granted as well in No. 86-276.

Respectfully submitted,

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